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PESC/SEC 1228
31.10.96 18.00 Z

- AT THE REQUEST OF THE PRESIDENCY, THE SECRETARIAT TRANSMITS THE FOLLOWING :

SUBJECT: COARM : COMMON CRITERIA TO BE APPLIED TO ARMS EXPORTS

FURTHER TO THE MEETING OF THE WORKING GROUP ON CONVENTIONAL ARMS EXPORTS (COARM) ON 1 OCTOBER 1996, THERE FOLLOWS THE TEXT OF THE GROUP'S REPORT TO THE POLITICAL COMMITTEE ON THE INTERPRETATION AND IMPLEMENTATION OF THE LUXEMBOURG AND LISBON CRITERIA. THIS TEXT REFLECTS THE SMALL NUMBER OF FURTHER AMENDMENTS TO THE DRAFT REPORT WHICH WERE AGREED BY THE GROUP, PLUS SOME EDITING NECESSARY TO ENSURE CONSISTENCY THROUGHOUT THE TEXT. IN ADDITION, DELEGATIONS WILL NOTE THAT THE REFERENCE IN FOOTNOTE (2) TO THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID (30/11/1973) HAS BEEN REMOVED. UNLIKE THE OTHER CONVENTIONS CITED, THIS CONVENTION HAS NOT BEEN SIGNED OR RATIFIED BY ANY EU MEMBER STATE.

AS INDICATED AT THE COARM MEETING OF 1 OCTOBER (CF. OPERATIONAL FOLLOW-UP TO MEETING, AS SET OUT IN ORAL REPORT, SEC 1097), THE PRESIDENCY WILL NOW SUBMIT THE GUIDELINES FOR INTERPRETATION AND PRACTICAL MEASURES FOR APPLICATION OF THE CRITERIA (WHICH ARE SET OUT IN ANNEX I TO THE REPORT) FOR APPROVAL BY THE POLITICAL COMMITTEE. THIS ISSUE HAS ACCORDINGLY BEEN ENTERED ON THE AGENDA OF THE POLITICAL COMMITTEE MEETING OF 14-15 NOVEMBER.

REPORT TO THE POLITICAL COMMITTEE

1. COMMON CRITERIA TO BE APPLIED TO ARMS EXPORTS HAVE BEEN ADOPTED BY THE EUROPEAN COUNCIL (LUXEMBOURG, 28-29 JUNE 1991 AND LISBON, 26-27 JUNE 1992). (SEE CRITERIA ATTACHED IN ANNEX II).
2. IN THE MANDATE WHICH THE POLITICAL COMMITTEE APPROVED ON 29 DECEMBER 1994, THE CONVENTIONAL ARMS EXPORTS WORKING GROUP (COARM) HAS BEEN CHARGED WITH GIVING PARTICULAR ATTENTION TO 'THE IMPLEMENTATION OF THE CRITERIA APPROVED BY THE EUROPEAN COUNCILS OF 29 JUNE 1991 AND OF 26/27 JUNE 1992, WITH A VIEW TO REACHING A COMMON INTERPRETATION ON THE BASIS OF THE COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION'.
3. IN RESPONSE TO THIS MANDATE, THE WORKING GROUP HAS EXAMINED THE IMPLEMENTATION AND INTERPRETATION OF THE EXISTING CRITERIA. A CONSENSUS HAS EMERGED ON THE CONTINUED VALIDITY OF THE EIGHT CRITERIA. THE WORKING GROUP HAS ALSO COME TO THE CONCLUSION THAT, AT THIS STAGE, THERE IS NO NEED FOR MODIFICATION OF OR ADDITIONS TO THE EXISTING CRITERIA.
4. FROM THE EXPERIENCE GAINED IN APPLYING THE CRITERIA, THE WORKING GROUP HAS REACHED AGREEMENT ON GUIDELINES FOR INTERPRETATION AND PRACTICAL MEASURES FOR APPLICATION WHICH FIGURE IN ANNEX I. THESE GUIDELINES FOR INTERPRETATION AND PRACTICAL MEASURES FOR APPLICATION ARE SUBMITTED FOR APPROVAL BY THE POLITICAL COMMITTEE.

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ANNEX I

GUIDELINES FOR INTERPRETATION AND PRACTICAL MEASURES FOR APPLICATION OF THE COMMON CRITERIA TO BE APPLIED TO ARMS EXPORTS

A. GUIDELINES FOR INTERPRETATION OF THE CRITERIA

- A.1. AS REGARDS THE FIRST CRITERION ('RESPECT FOR THE INTERNATIONAL COMMITMENTS OF THE MEMBER STATES OF THE COMMUNITY, IN PARTICULAR THE SANCTIONS DECREED BY THE SECURITY COUNCIL OF THE UNITED NATIONS AND THOSE DECREED BY THE COMMUNITY, AGREEMENTS ON NON-PROLIFERATION AND OTHER SUBJECTS, AS WELL AS OTHER INTERNATIONAL OBLIGATIONS'), IT IS STIPULATED THAT THESE COMMITMENTS INCLUDE IN PARTICULAR:

THE FOLLOWING INTERNATIONAL TREATIES: TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT), CHEMICAL WEAPONS CONVENTION (CWC), BIOLOGICAL AND TOXIN WEAPONS CONVENTION (BTWC), CERTAIN CONVENTIONAL WEAPONS CONVENTION (CCWC), TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE (CFE) ..

GUIDELINES OR EXISTING COMMITMENTS IN THE FIELD OF NON-PROLIFERATION, SUCH AS THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR), THE AUSTRALIA GROUP AND THE NUCLEAR SUPPLIERS' GROUP (NSG) AS WELL AS COMMITMENTS PURSUANT TO THE WASSENAAR ARRANGEMENT ..

THIS CRITERION ALSO COVERS ARMS EXPORT RESTRICTIONS JUSTIFIED BY A 'RISK OF CONTRIBUTING TO PROLIFERATION ACTIVITIES' AS REGARDS MATERIALS NOT DIRECTLY COVERED UNDER THE ABOVE TWO CATEGORIES.

- A.2. WITHIN THE SCOPE OF THEIR RESPECTIVE MANDATES, THE WORKING GROUPS ON NON-PROLIFERATION (CONOP) AND ON GLOBAL DISARMAMENT AND ARMS CONTROL (CODUN) AND OTHER COMPETENT WORKING GROUPS ARE INVITED TO DRAW TO THE ATTENTION OF COARM ANY INFORMATION CLEARLY RELEVANT TO THE APPLICATION OF THE FIRST CRITERION.

- A.3. APPLICATION OF THE SECOND CRITERION ('THE RESPECT OF HUMAN RIGHTS IN THE COUNTRY OF FINAL DESTINATION') WOULD BE ENHANCED BY A CONSIDERATION OF THE CONCLUSIONS, PARTICULARLY WITH RESPECT TO SERIOUS AND SYSTEMATIC VIOLATIONS, OF THOSE BODIES WHICH ARE PARTICULARLY RELEVANT IN THE SPHERE OF HUMAN RIGHTS (FOOTNOTE 1).

THE FINDINGS OF THE HUMAN RIGHTS WORKING GROUP ARE THEREFORE HIGHLY RELEVANT FOR THE APPLICATION OF THE SECOND CRITERION.

THE HUMAN RIGHTS CLAUSES INCLUDED IN THE INTERNATIONAL AGREEMENTS CONCLUDED BY THE COMMUNITY AND ITS MEMBER STATES WILL BE DULY TAKEN INTO ACCOUNT.

THE STATUS OF STATES OF DESTINATION VIS-A-VIS THE RELEVANT INTERNATIONAL HUMAN RIGHTS INSTRUMENTS IS ALSO OF INTEREST IN THIS CONTEXT (FOOTNOTE 2). NON-ADHERENCE TO THESE INSTRUMENTS SHOULD NOT, HOWEVER, PRECLUDE THOSE COUNTRIES FROM RECEIVING ARMS.

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IN THE APPLICATION OF THE SECOND CRITERION, THERE IS SCOPE FOR DECISIONS TO BE TAKEN TO APPLY RESTRICTIVE MEASURES GRADUALLY IN THE LIGHT OF THE EVOLUTION OF THE HUMAN RIGHTS SITUATION. THIS ALSO APPLIES TO THE OTHER CRITERIA.

- A.4 AS REGARDS THE THIRD CRITERION ('THE INTERNAL SITUATION IN THE COUNTRY OF FINAL DESTINATION, AS A FUNCTION OF THE EXISTENCE OF TENSIONS OR INTERNAL ARMED CONFLICTS'), IT IS AGREED THAT, FOR THE OVERALL ASSESSMENT OF THE COUNTRY OF FINAL DESTINATION, INFORMATION ON THE RELEVANT COMMITMENTS REFERRED TO IN A.1 COULD BE USEFUL TO THE LICENSING AUTHORITIES.
- A.5 APPLICATION OF THE SEVENTH CRITERION, 'RISK THAT THE EQUIPMENT WILL BE DIVERTED WITHIN THE BUYER COUNTRY OR RE-EXPORTED UNDER UNDESIRABLE CONDITIONS' WOULD BE ENHANCED BY AN EXCHANGE OF INFORMATION BETWEEN MEMBER STATES ON THE EXISTENCE AND EFFECTIVENESS OF LEGISLATIVE AND ADMINISTRATIVE EXPORT CONTROL PROCEDURES/INSTRUMENTS IN THE RECIPIENT COUNTRIES, AND THEIR EXPORT POLICY.
- A.6 IN INTERPRETING THE EIGHTH CRITERION, THE MEMBER STATES WILL TAKE ACCOUNT OF THE CONCLUSIONS OF THE DEVELOPMENT COUNCIL OF 28 NOVEMBER 1991 ADDRESSING THE LINKS BETWEEN LEGITIMATE DEFENCE REQUIREMENTS, MILITARY EXPENDITURE AND DEVELOPMENT AID.
- B. PRACTICAL MEASURES FOR APPLICATION
- B.1 THE EUROPEAN UNION WILL ENDEAVOUR TO SPECIFY THE CATEGORIES OF ARMS COVERED, AT UNION LEVEL, BY THE INTERNATIONAL COMMITMENTS REFERRED TO IN THE FIRST CRITERION WHERE THESE DO NOT INCLUDE PRECISE REFERENCE LISTS (FOR INSTANCE IN THE CASE OF UNITED NATIONS EMBARGOES AND SANCTIONS). FOR THESE PURPOSES, THE EMBARGO GRID DRAWN UP BY THE COARM WORKING GROUP IN 1991 WILL BE USED.
- B.2 TO ENHANCE THE APPLICATION OF THE FIRST CRITERION REFERRING TO RESPECT FOR SANCTIONS DECREED BY 'THE COMMUNITY', AN OFFICIAL LIST OF THE MEASURES ADOPTED BY THE EUROPEAN UNION WILL BE KEPT UP-TO-DATE.
- B.3 MEMBER STATES WILL TAKE FULL ADVANTAGE OF THE EXISTING MECHANISMS FOR RECIPROCAL INFORMATION ON THE ADOPTION OF RESTRICTIVE MEASURES AND THE INTRODUCTION OR LIFTING OF UNILATERAL EMBARGOES.
- B.4 THE FINDINGS OF THE GEOGRAPHICAL WORKING GROUPS AND THE WORKING GROUP ON TERRORISM ARE HIGHLY RELEVANT TO THE APPLICATION OF THE COMMON CRITERIA, PARTICULARLY CRITERIA IV ('THE PRESERVATION OF REGIONAL PEACE, SECURITY AND STABILITY') AND VIII ('LEGITIMATE NEEDS OF SECURITY AND DEFENCE'). CONVERSELY, THE REPORTS BY THE UNITED NATIONS SECRETARY-GENERAL CONCERNING THE REGISTER OF CONVENTIONAL ARMS TRANSFERS ARE RELEVANT FOR THE GEOGRAPHICAL WORKING GROUPS AND THE WORKING GROUP ON TERRORISM AS WELL AS FOR CODUN AND COARM.

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- B.5 THE WORKING GROUP, IN CONJUNCTION WITH THE GEOGRAPHICAL GROUPS CONCERNED, WILL ENSURE A COORDINATED EU APPROACH IN CASES WHERE A UNITED NATIONS OR EUROPEAN UNION ARMS EMBARGO ON A THIRD COUNTRY IS MODIFIED OR LIFTED, PARTICULARLY WHENEVER THE RELEVANT DECISION IS ACCOMPANIED BY CONDITIONS OR BY RECOMMENDATIONS FOR CAUTION OR MODERATION. THIS APPROACH SHOULD MAKE IT POSSIBLE TO IDENTIFY, WITHIN THE SET OF EIGHT COMMON CRITERIA, THOSE TO WHICH PARTICULAR ATTENTION SHOULD BE PAID AFTER THE LIFTING OF AN EMBARGO.
- B.6 IN THEIR JOINT REPORTS ANALYSING THE INTERNAL SITUATION OF THIRD COUNTRIES, HEADS OF MISSION ARE ASKED TO HAVE REGARD ALSO TO THE EIGHT CRITERIA.
- B.7 THE EU WILL CONTINUE TO PROMOTE THE COMMON CRITERIA IN INTERNATIONAL FORA AND IN ITS DIALOGUE WITH THIRD COUNTRIES (VIZ. UNITED NATIONS, OSCE, WASSENAAR ARRANGEMENT, ASEAN REGIONAL FORUM, THE ARMS CONTROL AND REGIONAL SECURITY (ACRS) MULTILATERAL WORKING GROUP ESTABLISHED IN THE CONTEXT OF THE MIDDLE-EAST PEACE PROCES, EU STRUCTURED DIALOGUE WITH ASSOCIATE COUNTRIES AND THE EURC-MEDITERRANEAN PARTNERSHIP).
- B.8 ON THE BASIS OF THE INFORMATION ON NATIONAL ARMS EXPORT POLICIES SHARED BY DELEGATIONS, THE WORKING GROUP WILL EXAMINE THE IMPACT OF THE CRITERIA AT ALL STAGES OF THE IMPLEMENTATION OF THOSE POLICIES AND THE POSSIBLE NEED TO EXPAND ON OR CLARIFY THE CRITERIA FURTHER, OR TO SUPPLEMENT THEM IF NEED BE.
- B.9 THE WORKING GROUP, IN CONSULTATION WITH THE WORKING GROUP ON NON-PROLIFERATION, WILL EXAMINE HOW BEST TO COMBAT DIVERSION OR VIOLATIONS OF UNDERTAKINGS NOT TO RE-EXPORT.

ANNEX II

COMMON CRITERIA TO BE APPLIED TO ARMS EXPORTS

- RESPECT FOR THE INTERNATIONAL COMMITMENTS OF THE MEMBER STATES OF THE COMMUNITY, IN PARTICULAR THE SANCTIONS DECREED BY THE SECURITY COUNCIL OF THE UNITED NATIONS AND THOSE DECREED BY THE COMMUNITY, AGREEMENTS ON NON-PROLIFERATION AND OTHER SUBJECTS, AS WELL AS OTHER INTERNATIONAL OBLIGATIONS
- THE RESPECT OF HUMAN RIGHTS IN THE COUNTRY OF FINAL DESTINATION
- THE INTERNAL SITUATION IN THE COUNTRY OF FINAL DESTINATION, AS A FUNCTION OF THE EXISTENCE OF TENSIONS OR INTERNAL ARMED CONFLICTS
- THE PRESERVATION OF REGIONAL PEACE, SECURITY AND STABILITY
- THE NATIONAL SECURITY OF THE MEMBER STATES AND OF TERRITORIES WHOSE EXTERNAL RELATIONS ARE THE RESPONSIBILITY OF A MEMBER STATE, AS WELL AS THAT OF FRIENDLY AND ALLIED COUNTRIES

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- THE BEHAVIOUR OF THE BUYER COUNTRY WITH REGARD TO THE INTERNATIONAL COMMUNITY, AS REGARDS IN PARTICULAR ITS ATTITUDE TO TERRORISM, THE NATURE OF ITS ALLIANCES, AND RESPECT FOR INTERNATIONAL LAW
- THE EXISTENCE OF A RISK THAT THE EQUIPMENT WILL BE DIVERTED WITHIN THE BUYER COUNTRY OR RE-EXPORTED UNDER UNDESIRABLE CONDITIONS

{EXTRACTS FROM THE CONCLUSIONS OF THE PRESIDENCY OF THE EUROPEAN COUNCIL IN LUXEMBOURG, 28 AND 29 JUNE 1991}

- THE COMPATIBILITY OF THE ARMS EXPORTS WITH THE TECHNICAL AND ECONOMIC CAPACITY OF THE RECIPIENT COUNTRY, TAKING INTO ACCOUNT THE DESIRABILITY THAT STATES SHOULD ACHIEVE THEIR LEGITIMATE NEEDS OF SECURITY AND DEFENCE WITH THE LEAST DIVERSION FOR ARMAMENTS OF HUMAN AND ECONOMIC RESOURCES.

{EXTRACT FROM THE CONCLUSIONS OF THE PRESIDENCY OF THE EUROPEAN COUNCIL IN LISBON, 26 AND 27 JUNE 1992}.

FOOTNOTE (1) UNITED NATIONS COMMISSION OF HUMAN RIGHTS., UNITED NATIONS GENERAL ASSEMBLY., HIGH COMMISSIONER FOR HUMAN RIGHTS., MECHANISMS EXISTING WITHIN THE OSCE AND THE COUNCIL OF EUROPE.

FOOTNOTE (2) ILLUSTRATIVE, NON-EXHAUSTIVE LIST OF RELEVANT INTERNATIONAL INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS :

CONVENTION OF THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (9/12/1948)., INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (7/3/1966)., INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (16/12/1966)., INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (16/12/1966)., CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (10/12/1984)., CONVENTION ON THE RIGHTS OF THE CHILD (20/12/1989)., SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY.

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